Supreme Court, U.S.
FILED

97 - 43 JUL 3 1997

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

ST. CHARLES COUNTY, MISSOURI,
Petitioner,

VS.

MISSOURI FAMILY HEALTH COUNCIL,
Respondent.

Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

MARY STEWART TANSEY
(Counsel of Record)
STEPHANIE KARR GASTMAN

Office of the St. Charles
County Counselor
100 North Third Street
Room 216
St. Charles, Missouri 63301
(314) 949-7540

Attorneys for Petitioner

St. Louis Law Printing, Inc. 14239 Manchester Rd. Manchester, MO 63011 314-231-4477

16pp
$10

QUESTIONS PRESENTED FOR REVIEW

1. Do the federal courts have jurisdiction when an action was filed seeking a declaratory judgment as to the proper interpretation of a state statute and the court's interpretation of that statute may leave the statute in conflict with federal regulations?

2. Should an action be dismissed which involves the specific issue of applying parental consent requirements when a local government uses its own funds in providing services when the government agency is also a Title X provider and parental consent requirements have generally been prohibited under Title X?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
STATUTORY AND REGULATORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING A WRIT	4
I. IN CONCLUDING THAT THE FEDERAL COURTS HAD JURISDICTION OVER THIS ACTION, THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION	4
II. IN DISMISSING THIS ACTION THE COURT OF APPEALS FAILED TO PROPERLY APPLY THE TITLE X REGULATIONS AND THE APPELLATE COURT'S APPLICATION SEEMS TO BE IN CONFLICT WITH OTHER COURT DECISIONS	7
CONCLUSION	10

TABLE OF AUTHORITIES

Page(s)

Cases:

Caterpillar, Inc. v. Williams, 482 U.S. 386, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987) 4

Doe v. Pickett, 480 F.Supp. 1218 (D.C.W.Va. 1979) ... 8

Franchise Tax Bd. of State of California v. Construction Laborers Vacation Trust for Southern California, 463 U.S. 1, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983) 5,6

Gully v. First National Bank, 299 U.S. 109, 57 S.Ct. 96, 81 L.Ed. 70 (1936) 6

Jane Does v. State of Utah Dept. of Health, 776 F.2d 253 (10th Cir. 1985) 9

Merrell Dow Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986) 4,5

Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974) 7

Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 70 S.Ct. 876, 94 L.Ed. 1194 (1950) 6

Statutory and Regulatory Provisions:

28 U.S.C.A. § 1441 (a) 4

28 U.S.C.A. § 1331 4

Section 431.061 R.S.Mo. 2,3,5

42 C.F.R. Section 59.5 (a) (1) 9

PETITION FOR WRIT OF CERTIORARI

The petitioner, St. Charles County, Missouri, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 107 F.3d 682 and is reprinted as Appendix A in the Appendix to this petition. The opinions of the District Court are unreported and are reprinted as Appendix B and Appendix C in the Appendix.

JURISDICTION

The petitioner seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case. The opinion of the Court of Appeals was entered on February 27, 1997. The petition for rehearing was denied on April 7, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Section 431.061 R.S.Mo. 1994

County Policy Regarding Informed Consent for Medical Treatment

42 C.F.R. Part 59

The pertinent text of each statutory and regulatory provision is set forth in Appendix E pursuant to Rule 14.1(f) of the Supreme Court Rules.

STATEMENT OF THE CASE

St. Charles County, Missouri, operates two health clinics and offers certain medical services to low–income persons. The family planning project is part of the overall program offered.

A voluntary federal program exists to provide family planning services to low–income families which is commonly referred to as the "Title X Program". Respondent Health Council is a not–for–profit corporation charged with administering the Title X Program in Missouri. Petitioner St. Charles County has taken part in that program for years and provides several Title X services. St. Charles County applied for a Title X grant in 1995; the County's request would have made up approximately one–third of the funds allocated for the County's family planning program.

St. Charles County provides several Title X services without regard to age. However, St. Charles County also provides other services. Effective May 15, 1995, Petitioner St. Charles County placed a parental consent requirement on those additional medical services, with some exceptions. The policy requires parental consent for minors when prescriptive medications or intrusive procedures are needed. However, minors may obtain a test for pregnancy and treatment for sexually transmitted diseases and alcohol and drug abuse without parental consent. Any treatment that is not prescriptive or intrusive does not require parental consent; examples of such treatment include counseling, information, referral, examination, consultation and provision of supplies for certain methods of family planning, including natural family planning, condoms and contraceptive foam. St. Charles County adopted this parental consent policy pursuant to Missouri Revised Statutes, Section 431.061.

Respondent Missouri Family Health Council disputes that Section 431.061 R.S.Mo. requires parental consent for any medical procedure. Despite the fact that St. Charles County still

provides certain Title X services without parental consent, the Health Council refused to consider the County's 1995 application for a Title X grant. The parties disagreed over the interpretation of Section 431.061 R.S.Mo. as applied to medical services which the County provides with its own funds; the Council stated in its letter dated May 23, 1995, "Contrary to your letter, §431.061, RSMo. 1994 does not address prescriptive medication or intrusive procedures for minors. It merely addresses classes of conditions for which minors may consent to services." The refusal to consider the County's Title X application gave rise to a justiciable controversy under Missouri's Declaratory Judgment statute.

The County filed a Petition for Declaratory Judgment in state court seeking a declaration as to the proper interpretation of Section 431.061 R.S.Mo. Respondent Missouri Family Health Council removed the case to the U.S. District Court for the Eastern District of Missouri and argued that the District Court had jurisdiction in that it would invoke federal regulations in its defense. Petitioner County's Motion to Remand was denied and the District Court dimissed the County's Petition.

Petitioner filed a timely appeal to the United States Court of Appeals for the Eighth Circuit and on February 27, 1997, a panel of the Court affirmed the District Court's order. Petitioner filed a timely motion for rehearing and on April 7, 1997, the Court denied rehearing.

REASONS FOR GRANTING A WRIT

I. IN CONCLUDING THAT THE FEDERAL COURTS HAD JURISDICTION OVER THIS ACTION, THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

This Court recognizes the importance of allowing state courts to resolve state law questions and has "long construed the statutory grant of federal–question jurisdiction as conferring a more limited power" than the power to hear any case in which a federal question is "an ingredient of the action". *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 807, 106 S.Ct. 3229, 3232, 92 L.Ed.2d 650 (1986).

A state court action may be properly removed to federal court only if the case falls within the original jurisdiction of the federal courts. 28 U.S.C.A. § 1441(a). Civil actions "arising under the Constitution, laws, or treaties of the United States" confer original jurisdiction to the federal district courts. 28 U.S.C.A. § 1331.

Federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987). The well–pleaded complaint rule makes the plaintiff "the master of the claim" and allows the plaintiff to "avoid federal jurisdiction by exclusive reliance on state law." *Caterpillar*, 482 U.S. at 392. A defense that raises a federal question is inadequate to confer federal jurisdiction. *Merrell Dow Pharmaceuticals*, 478 U.S. at 808, 106 S.Ct. at 3232.

No Federal Question on Face of Complaint

When first confronted with the present controversy, the County saw two issues: first, the conflict over the proper interpretation of Section 431.061 R.S.Mo. and, second, depending on the interpretation of the statute, the possibility that the statute may conflict with federal regulations.

The County chose to pursue an answer to the first question before proceeding to the latter issue; the latter issue may be made moot by the declaratory judgment obtained on the first issue. Through a state action for a declaratory judgment, the County requested that the state court interpret Section 431.061 R.S.Mo., thereby answering the following question: If County provides medical services with its own funds, is it required to adopt a policy of parental consent or is it free to adopt whatever policy it chooses?

While the statute applies to medical treatment without regard to the provider or the funding source, it may ultimately be determined that the application of the statute to Title X providers using Title X funds is in conflict with federal regulations. However, the "mere presence of a federal issue in a state cause of action does not automatically confer federal–question jurisdiction." *Merrell Dow Pharmaceuticals*, 478 U.S. at 813, 106 S.Ct. at 3234. Additionally, the proper interpretation of the statute, which applies to all medical services, does not depend on a resolution of a question involving the federal regulations. *See*, *Franchise Tax Bd. of State of California v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 27–28, 103 S.Ct. 2841, 2856, 77 L.Ed.2d 420 (1983):

> Under our interpretations, Congress has given the lower federal courts jurisdiction to hear, originally or by removal from a state court, only those cases in which a well–pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessar-

> ily depends on resolution of a substantial question of federal law.

Therefore, the Court of Appeals for the Eighth Circuit erred in concluding that federal jurisdiction was proper in that no federal question appears on the face of the complaint. And, the relief requested does not depend on a resolution of a substantial question of federal law. If a federal issue exists it is similar to the federal question described by Justice Cardozo in *Gully v. First National Bank*, 299 U.S. 109, 117, 57 S.Ct. 96, 99–100, 81 L.Ed. 70 (1936):

> The most that one can say is that a question of federal law is lurking in the background, just as farther in the background there lurks a question of constitutional law, the question of state power in our federal form of government. A dispute so doubtful and conjectural, so far removed from plain necessity, is unavailable to extinguish the jurisdiction of the states.

State Declaratory Judgment Action

Additionally, this action was brought in state court pursuant to the state's declaratory judgment statute. The action sought a declaration as to the proper interpretation of a state statute; in its current form, the action could not have been brought in federal court. This Court has stated:

> Therefore, we hold that under the jurisdictional statutes as they now stand federal courts do not have original jurisdiction, nor do they acquire jurisdiction on removal, when a federal question is presented by a complaint for a state declaratory judgment, but *Skelly Oil* would bar jurisdiction if the plaintiff had sought a federal declaratory judgment.

Franchise Tax Bd., 463 U.S. at 18–19, 103 S.Ct. at 2851.

II. IN DISMISSING THIS ACTION THE COURT OF APPEALS FAILED TO PROPERLY APPLY THE TITLE X REGULATIONS AND THE APPELLATE COURT'S APPLICATION SEEMS TO BE IN CONFLICT WITH OTHER COURT DECISIONS

When presented with a motion to dismiss, the issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974).

The Court of Appeals erroneously affirmed the dismissal of this action reasoning that the Title X regulations require provision of Title X services without regard to age and that other courts had found that parental consent cannot be required before a minor receives Title X services.

The County's 1995 Application for Title X funds was attached to the Petition for Declaratory Judgment which is included in the Appendix as Appendix F (Pages A–29 and following; the Application begins on A–36).

The Title Page of the Application (A–36) shows that only about one–third of the project funds are derived from the Title X grant ($97,527.00 out of $282,344.00). Page 2 of the Application states that the entire Title X grant would be spent for family planning services and generally outlines how the funds would be allocated. In showing why the budget requirements for the entire project have increased, the County briefly addressed increased nursing costs, additional services involving sexually transmitted diseases, and the fact that the number of pregnancy tests is expected to increase. The diagnosis and treatment of sexually transmitted diseases and pregnancy tests are family planning

services which are offered without parental consent[1]. Page 8 of the Application illustrates the services offered and for which services referrals are made. St. Charles County provides the following family planning services without parental consent: family planning education and counseling; physical assessment and examination; some contraceptive supplies such as condoms and contraceptive foam; testing and treatment of sexually transmitted diseases; HIV testing; the treatment of some gynecological problems; and referrals. Page 13 of the Application discusses the priorities of the project and states some of the priorities are:

> Increasing outreach to women not likely to seek services, including homeless persons, disabled persons, substance abusers, and adolescents. Send information and/or speakers to each of the agencies who serve the persons e.g. homeless shelters, substance abuse agencies, Youth in Need, Women's Crisis Shelters, schools and other agencies that service the handicapped. Our agency is handicapped accessible.
>
> Expanding the comprehensiveness of reproductive health services, including STD and cancer screening and prevention, increased involvement of male partners, HIV prevention education and counseling and substance abuse screening and referral. Establish a STD clinic including Family Planning services to both males and females. The Health Unit is currently offering HIV and syphilis screening to both males and females. Family clinic is currently doing STD screenings. Teach self breast exam to all clients.

---

[1]The Court in *Doe v. Pickett*, 480 F.Supp. 1218 (D.C.W.Va. 1979), emphasized "venereal disease, pregnancy and drug abuse" as medical problems for which treatment was essential under the purposes of the Title X program. The County offers services for these problems without parental consent.

> Serving adolescents, including more community education, emphasis on postponement of sexual activity, and more accessible provision of contraceptive counseling and contraception. Teaching regarding the fact that the more sexual partners one has, the greater the risk for STD/HIV and cancer. Teach to use barrier methods or abstain to prevent STD/HIV. Offer hours convenient for teenagers and working persons. Work with school nurses to get prevention information to the students.

These services are provided without parental consent.

Title X funds previously made up only one–third of the County's budget for family planning services. With those funds, the County offers several Title X services without parental consent. The County is not required to offer all family planning services available. *See* 42 C.F.R. Section 59.5 (a) (1) ("If an organization offers only a single method of family planning, it may participate as part of a project as long as the entire project offers a broad range of family planning services.")

The County offers other services with its own funds. For intrusive or prescriptive medical procedures (not including pregnancy tests and treatment for sexually transmitted diseases, drug and alcohol abuse), parental consent is required. The effect of the Court's dismissal of this action is to place Title X regulation on the use of County funds. This is in conflict with the opinion of the Tenth Circuit in *Jane Does v. State of Utah Dept. of Health*, 776 F.2d 253 (10th Cir. 1985):

> We do not see a preemption issue in this case. The state act and the rules enforced by the state agency for parental consent instead seek to add an additional condition or requirement sought to be placed by the state on eligibility for Title X services, or grants, by Congress. *Utah is free to apply parental consent requirements in the use of its own funds.*

776 F.2d at 256 (Emphasis added.)

CONCLUSION

The petition for writ of certiorari should be granted to exercise this Court's power of supervision in ensuring that federal courts properly exercise their jurisdiction and to examine an apparent conflict between courts on a question which has not been answered directly by the courts.

Respectfully Submitted

Mary Stewart Tansey
Stephanie Karr Gastman

Office of the St. Charles
County Counselor
100 North Third Street
Room 216
St. Charles, Missouri 63301
(314) 949-7540

Attorneys for Petitioner

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 96-3029

County of St. Charles, Missouri,
Appellant,

v.

Missouri Family Health Council,
Appellee.

Appeal from the United States District Court
for the Eastern District of Missouri.

Submitted: January 16, 1997
Filed: February 27, 1997

Before BOWMAN and MURPHY, Circuit Judges, and KYLE.[1]
District Judge.

MURPHY, Circuit Judge.

This is a declaratory judgment action brought by the County of St. Charles, Missouri, to clarify its eligibility for funding under Title X, 42 U.S.C. § 300. The County sought a declaration in state court that the Missouri Family Health Council (Council) could not reject its application for funding on the basis of its parental consent policy. The Council removed the case to federal court and moved to dismiss for failure to state a claim. The district court[2] denied the County's motion to remand after

---

[1] The Honorable Richard H. Kyle, United States District Judge for the District of Minnesota, sitting by designation.

[2] The Honorable Stephen N. Limbaugh, United States District Judge for the Eastern District of Missouri.

determining there was federal jurisdiction and then granted the Council's motion to dismiss. The County appeals, and we affirm.

Title X provides federal funds for family planning services to state and nonprofit organizations. 42 U.S.C. § 300. The Council is a not-for-profit organization which receives Title X funds and exists almost entirely for the purpose of administering Title X grants to subgrantees in Missouri. As a condition for receiving these funds, the Council agrees to abide by the related regulations to Title X. Similar entities which award Title X funding to subgrantees are used in each state.

The County had received Title X grant money through the Council until 1995, but in the application it submitted that year it notified the Council of a new policy it was enforcing. The policy required parental consent for adolescents to receive prescriptive medications or intrusive medical procedures, including some forms of contraceptives. The Council informed the County that its application would not be considered because the parental consent policy disqualified it from receiving Title X funds.

The County then filed its petition for declaratory relief, claiming that under Missouri law, § 431.061 Mo. Rev. Stat., it was required to adopt the parental consent policy and that "therefore, the policy is not a basis upon which the Council may refuse to consider the County's application for the Title X grant." The Council removed the case to federal court, claiming jurisdiction based on a federal question and moved for dismissal for failure to state a claim. The County filed a motion to remand, but the district court determined there was federal jurisdiction and granted the motion to dismiss, finding that the County could not prove any set of facts entitling it to be eligible for funding under Title X. The County appeals, arguing the district court erred by failing to remand the case to state court and by dismissing the case for failure to state a claim.

The County argues that federal jurisdiction is lacking because its petition only requires interpretation of the Missouri statute which prompted its parental consent policy. The Council responds that the action was properly removed to federal court because the County asserted in its petition that it qualified for Title X funds and qualifications for those funds are determined by 42 U.S.C. § 300. The denial of a motion to remand to state court is reviewed de novo. *Gaming Corp. of Am. v. Dorsey & Whitney*, 88 F.3d 536, 542 (8th Cir. 1996).

Only actions which originally could have been filed in federal court may be removed there. 28 U.S.C. § 1441(a). When jurisdiction is based on a federal question, the well-pleaded complaint rule requires that the "federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). A district court does not have discretion to remand a case that states a federal question. *Gaming Corp.*, 88 F.3d at 542 (citations omitted).

In its petition for declaratory judgment, the County stated that it

> prays this court to declare that the policy regarding informed consent is consistent with state law, specifically §431.061 R.S.Mo., and that therefore, the policy is not a basis upon which the Council may refuse to consider the [C]ounty's application for a Title X grant. . . .

The County attached to its petition a copy of the Council's letter rejecting its application for Title X funds because the parental consent policy violated Title X regulations and guidelines. The face of the County's petition contains the federal question of whether the parental consent policy can be a basis for denying the County's application for Title X funds. The relief which the County seeks is a declaration that it is not ineligible to receive federal funds. The action arises under federal law, and the district court therefore properly declined to remand the case.

The County also argues that the district court erred in dismissing the case for failure to state a claim because its parental consent policy is required by state law and therefore should not disqualify it from receiving Title X funds.[3] The Council responds that the motion to dismiss was properly granted because Title X regulations and guidelines prohibit the recipient of Title X funds from requiring parental consent for minors.

A motion to dismiss for failure to state a claim should be granted only if it is clear that no relief could be granted under any set of facts, construing the allegations in the complaint favorably to the pleader. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). Whether a complaint states a claim is a question of law which is reviewed de novo. *Concerned Citizens of Neb. v. United States Nuclear Regulatory Comm'n*, 970 F.2d 421, 425 (8th Cir. 1992).

Title X explicitly provides that family planning services for adolescents are to be provided by the programs which it funds. 42 U.S.C. § 300(a). The statute states that family participation should be encouraged only "to the extent practical," and the legislative history indicates that Congress did not desire mandatory parental notification or parental consent for a minor to receive Title X services. *Planned Parenthood Fed. of Am. v. Heckler*, 712 F.2d 650, 656-61 (D.C. Cir. 1983) (examining whether legislative history of Title X permits requirement of parental notification or consent). The related regulations thus require that family planning services must be provided without

---

[3] In its brief and at oral argument, the County raised a new argument stating it receives two streams of funding for its clinics and Title X funds would not be used for procedures which require parental consent. No facts or information concerning this funding argument were contained in its petition or in any accompanying materials, and the County did not move to have any such material considered by the district court. Only facts alleged in the complaint and materials attached to it are considered on a motion to dismiss. *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir. 1986).

regard to age, 42 C.F.R. § 59.5(a)(4), and circuits which have considered the issue have uniformly found that parental consent cannot be required before a minor receives Title X services. *Doe v. Utah Dep't of Health*, 776 F.2d 253, 255-56 (10th Cir.) (enjoining the enforcement of state law requiring parental consent for minors to receive Title X services); *New York v. Heckler*, 719 F.2d 1191, 1197 (2d Cir. 1983) (invalidating regulations requiring parental notice and requiring recipients of Title X funds to abide by state law on parental consent); *Planned Parenthood Fed. of Am.*, 712 F.2d 650, 665 (same).

In its petition, the County set forth the Missouri law which it believed required parental consent, its policy on parental consent, and its application to the Council informing it about the policy. The County alleged that because its parental consent policy conformed with state law, the Council could not deny its application for Title X funds on the basis of the policy. All the circuits which have considered the validity of parental consent requirements for adolescents to receive Title X federal services have found them prohibited by statute, regardless of whether they are based on state law. *See, e.g., Doe v. Utah Dep't of Health*, 776 F.2d at 255-56; *Planned Parenthood Fed. of Am.*, 712 F.2d 650, 665. Looking at the allegations in the petition in the most favorable light, it does not appear that the County could prove facts entitling it to relief. The district court therefore did not err in granting the Council's motion to dismiss.

The judgment of the district court is affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 4:95CV1915SNL

COUNTY OF ST. CHARLES,
Plaintiff,

vs.

MISSOURI FAMILY HEALTH COUNCIL, INC.,
Defendant.

ORDER

[Filed: June 19, 1996]

This matter is before the Court on the defendant's motion to dismiss (#5), filed October 11, 1995. The motion was held in abeyance until such time plaintiff's counsel entered their appearance and the Court ruled on the subsequent motion to remand. On March 6, 1996 the Court denied the plaintiff's motion to remand and granted the plaintiff additional time to respond to the pending motion to dismiss. Plaintiff filed a motion to amend the Court's order of March 6, 1996 and its response to the pending motion to dismiss. In a companion order the Court has now denied the plaintiff's motion to amend. The parties have filed responsive pleadings in connection with the pending motion to dismiss. The motion is now ripe for disposition.

This Court has found that the plaintiff's application was rejected because plaintiff's provision of certain family planning services to minors required parental consent. Requiring parental consent for provision of services to minors is a violation of Title X and it was for this reason that the defendant rejected plaintiff's application. Plaintiff, in responding to the motion to dismiss, still

insists that the interpretation and application of Missouri statute §431.061 R.S.Mo. is central to this case. The Court disagrees. There is no active dispute regarding §431.061; the application was rejected because of Title X guidelines. Plaintiff further argues that defendant's cited caselaw is inapplicable because of issues regarding referral of minors to other Title X providers or providing a single method of family planning under 42 C.F.R. 59.5(a) (1).

The Court has carefully reviewed the parties' pleadings and the relevant caselaw. Plaintiff attempts to circumvent the motion to dismiss by arguing issues outside the face of its complaint. Based upon the plaintiff's complaint, its application, as submitted by plaintiff, was properly rejected because it violated the provisions of Title X. Defendant contends that it has never made a decision regarding an application from plaintiff based upon referral to other Title X providers or upon plaintiff providing a single method of family planning. Until such an application is made and a decision is made by defendant, plaintiff cannot prove any set of facts entitling it to be eligible for funding under Title X.

Accordingly,

IT IS HEREBY ORDERED that defendant's motion to dismiss (#5) be and is GRANTED. This cause of action is hereby DISMISSED in its entirety.

Dated this 19th day of June, 1996.

/s/ Stephen N. Limbaugh
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 4:95CV1915SNL

COUNTY OF ST. CHARLES,
Plaintiff,

vs.

MISSOURI FAMILY HEALTH COUNCIL, INC.,
Defendant.

ORDER

[Filed: March 06, 1996]

In accordance with the memorandum filed herein this day,

IT IS HEREBY ORDERED that plaintiff's motion for remand (#17) be and is DENIED.

IT IS FINALLY ORDERED that defendant's motion to dismiss (#5) be and is held in abeyance until such time plaintiff files a responsive pleading. Plaintiff is allowed up to and including March 28, 1996 to file its response to the pending motion to dismiss. No additional response time shall be granted except for good cause shown. Upon expiration of the response deadline, the Court will consider the pending motion ripe for disposition.

Dated this 6th day of March, 1996.

/s/ Stephen N. Limbaugh
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 4:95CV1915SNL

COUNTY OF ST. CHARLES,
Plaintiff,

vs.

MISSOURI FAMILY HEALTH COUNCIL, INC.,
Defendant.

MEMORANDUM

[Filed: March 06, 1996]

Plaintiff originally filed this declaratory judgment action in the Circuit Court for St. Charles County. On October 11, 1995 defendant removed the case to federal court claiming federal question jurisdiction. On this same date, defendant filed a motion to dismiss for failure to state a claim and/or because of federal preemption (#5). In response to the motion to dismiss, plaintiff filed a motion to remand asserting that the case only involves state law, not federal law (#17), filed December 5, 1995 (#17). On December 15, 1995 plaintiff further filed a responsive pleading which in essence circumvents the arguments proffered in the motion to dismiss by arguing that the merits of the motion to dismiss cannot be addressed until the Court rules on the motion to remand (#18). On December 15, 1995 the defendant filed its opposition to the plaintiff's motion to remand (#19).

The Court agrees that the first order of business is to determine whether or not this Court has subject matter jurisdiction over this cause of action. If the Court determines that it does not, then the defendant's motion to dismiss is a moot issue. If the Court determines that it does, then defendant's motion to dismiss will be addressed.

Plaintiff avers that this cause of action is "a civil action which seeks a declaration that St. Charles County policy complies with state law, specifically Section 431.061 R.S.Mo." *Suggestions in Support of Plaintiff's Motion to Remand to the State Court* (#17), pg. 1. Defendant, on the other hand, characterizes this cause of action as one "for a declaratory judgment declaring that defendant cannot refuse to consider plaintiff's application for Title X funds because of plaintiff's policy requiring parental consent for delivery of family planning services to minors." *Defendant's Suggestions in Support of its Motion to Dismiss* (#5), pg. 1. The proper characterization of the substance of the plaintiff's cause of action is crucial to the decision as to whether or not remand is necessary.

A state court action may be properly removed to federal court only if the case falls within the original jurisdiction of the federal courts. 28 U.S.C. §1441(a). If the basis for removal is federal question jurisdiction, the case may be removed without reference to the citizenship of the parties; however, where removal is based upon diversity of citizenship, the case is removable only if none of the defendants is a citizen of the forum state. 28 U.S.C. §1441(b).

Section 1331 confers original jurisdiction to the federal district courts "of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. §1331. Jurisdiction "founded on a claim or right arising under the Constitution, treaties or laws of the United States" is known as federal question jurisdiction. 28 U.S.C. §1441(b).

Removal based upon federal question jurisdiction is proper only if the claim asserting a federal question appears on the face of the plaintiff's properly pleaded complaint. "The judicially created well-pleaded complaint rule states that the basis of federal jurisdiction must appear on the face of the plaintiff's complaint and that removal to federal court is improper if federal

jurisdiction is premised solely upon a plaintiff's allegation of an anticipated defense or upon a defendant's responsive pleading." *Reding v. Federal Deposit Insurance Corp.*, 942 F.2d. 1254, 1257 (8th Cir. 1991) (citations omitted); *see also, M. Nahas & Co. v. First National Bank of Hot Springs*, 930 F.2d. 608, 611 (8th Cir. 1991); *Thermalcraft. Inc. v. U.S. Sprint Communications*, 779 F.Supp. 1039, 1040 (W.D.Mo. 1991). Thus, a state court action is not removable where the federal question arises in the context of a defense, even if the defense is that the state claim is preempted by federal law.[1]

However, a plaintiff cannot thwart the removal of a case by inadvertently, mistakenly, or fraudulently concealing the federal question with "artful pleading" of the federal cause of action in state law terms. *Federated Dept. Stores. Inc. v. Moitie* 452 U.S. 394, 397 n. 2 (1981); *M. Nahas & Co. v. First National Bank of Hot Springs*, at 612; *Thermalcraft, Inc. v. U.S. Sprint Communications*, at 1040; 14A C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure*, §3722, at 267-278 (1985).

Plaintiff contends that this is simply a case seeking a declaration as to whether plaintiff's policy of requiring parental consent in order for minors to receive family-planning services, including prescriptions for contraceptive medications complies with state law. Defendants contend compliance with state law is immaterial, the issue posed by the plaintiff's complaint is whether defendant can refuse the plaintiffs application for federal funds because its policy, even if it complies with state law, conflicts

---

[1] However, there does exist an "independent corollary" to the well-pleaded complaint doctrine known as the "complete pre-emption" doctrine. In instances where the preemptive force of the federal law is so clearly and strongly stated with respect to an area of state law, the state law claim is considered to be a federal claim from its inception, thus, arising under federal law, and removal is proper. *Caterpillar. Inc. v. Williams*, 482 U.S.. 386 . 392-93 (1987).

with federal law. In order to fully appreciate the legal issue at hand, the Court must first review the plaintiff' 8 complaint.

In paragraph 2 of the plaintiff's Petition for Declaratory Judgment, plaintiff characterizes the defendant as an "not-for profit corporation in good standing which administers, in Missouri, grants for family planning purposes from the Health and Human Services Department (hereinafter 'Title X grants')". In paragraph 3, plaintiff states its purpose for the lawsuit: "St. Charles County brings this action pursuant to Section 527.020 R.S.Mo. and Mo.R. Civ. Pro. 87.02(a), seeking a declaratory judgment regarding the application for a Title X grant submitted by St. Charles County."

In the *Background* section of its complaint, plaintiff sets forth Missouri law requiring parental consent for unemancipated minors regarding non-emergency prescriptive medications and intrusive medical procedures. It further sets forth the development of its policy, which mirrors state law, regarding informed consent for prescriptive medications and intrusive medical procedures. In the *Operative Facts* section of its complaint, plaintiff states that on or about April 27, 1995 it submitted its application for Title X funds with the defendant; on or about the same date, plaintiff also forwarded to the defendant a copy of its policy on informed consent. Plaintiff further states that on or about May 3, 1995 defendant rejected the plaintiff's application for Title X funds due to plaintiff's policy requiring informed consent by unemancipated minors for prescriptive medications and medical services, including family-planning services. Plaintiff further states that in a later letter, the defendant claimed that Missouri law, specifically §431.061 R.S.Mo. did not require a policy on informed consent as adopted by the plaintiff.

Finally, in its *Controversy* section, plaintiff contends that a dispute exists between the plaintiff and the defendant as to the interpretation and application of §431.061 R.S.Mo. Plaintiff claims that as long as it complies with state law, defendant will

refuse to consider its application for Title X funds. Plaintiff seeks for this Court to "declare that the policy regarding informed consent is consistent with state law, specifically Section 431.061 R.S.Mo., and that, therefore, the policy is not a basis upon which the Council may refuse to consider the County's application for a Title X grant . . . ".

Attached to its Petition for Declaratory Judgment, plaintiff submitted copies of its informed consent policy, its Title X application, and defendant's letters of May 3 and May 23, 1995. Since these are attached to the Petition and are referred to in the Petition, the Court considers these attachments to be part of the "face of the complaint" and will review these as well. The policy and application for funds do not lend any useful information to the Court's review of the legal issue present in this litigation; however, the defendant's two letters do present useful information. In its letter of May 3, 1995 defendant informs the plaintiff that:

> Please be advised that the policy on informed consent as written is in violation of Sections 59.5 and 59.11 of the Title X regulations; and Section 8.7 of the Title X Guidelines (copies attached). We regret to inform you that we cannot consider the application for Title X funds for delivery of family planning services in St. Charles County under these circumstances. All Title X regulations and guidelines must be adhered to in order to be eligible to receive the federal funds.

Plaintiff's Petition for Declaratory Judgment, Exhibit C.

In its letter of May 23, 1995 defendant states that the letter is in response to plaintiff's letter of May 12, 1995. Defendant further sets forth in this letter the specifics of Sections 59.5 and 59.11 and why the plaintiff's policy violates Title X regulations and guidelines. The letter then states:

> Contrary to your letter, §431.061 R.S.Mo. 1994 does not address prescriptive medication or intrusive procedures for minors. It merely addresses classes of conditions for which minors may consent to services. Further, your policy limits treatment of minors to "a test for pregnancy" and does not include "family planning methods" and "counseling" as described on page two of your letter.

Finally, defendant commends the plaintiff for providing family planning services through the St. Charles County Nursing Service and hopes that the Service will refer those minors who are unable to obtain parental consent for services with another Title X organization in St. Charles County. Plaintiff's Petition for Declaratory Judgment, Exhibit D.

It is this Court's considered opinion that the "face of the complaint" raises a federal question. Plaintiff's application was rejected for the sole reason that plaintiff's policy did not comply with Title X regulations and guidelines.[2] The issue of compliance with §431.061 was raised by the plaintiff and defendant simply responded with an opinion as to its interpretation; however, compliance or non-compliance with §431.061 was not rejecting the application. Essentially, there is no active dispute between the interpretation and application of §431.061. Defendant doesn't care whether plaintiff's policy complies with state law or not. It is compliance with the provisions of Title X which is the real issue in this case. Plaintiff recognizes this fact, despite its attempts to "artfully plead" around it, when it seeks a declaration that "the policy is not a basis upon which the Council may refuse to consider the County's application for a Title X grant". The Court concurs with the defendant that plaintiff's real complaint in this case is that it has been disqualified from

---

[2] The fact that the Court cites this as the reason for the rejection of the plaintiff's application for Title X funds does not indicate the Court's opinion on the merits of the reason given.

receiving Title X grant funding of its policy requiring parental consent. This is a federal question.

As to the defendant's motion to dismiss, the Court will allow the plaintiff additional time to file a proper response to it. Upon expiration of this response time, the Court will consider the motion.

Dated this 6th day of March, 1996.

/s/ Stephen N. Limbaugh
United States District Judge

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 96-3029EMSL

County of St. Charles,
Appellant,

vs.

Missouri Family Health Council, Inc.,
Appellee.

Appeal from the United States District Court
for the Eastern District of Missouri.

The petition for rehearing filed by the appellant has been considered by the court and is denied.

April 7, 1997

Order Entered at the Direction of the Court:
/s/ Michael E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX E

INFORMED CONSENT — ADULTS & MINORS ST. CHARLES COUNTY HEALTH DEPARTMENT

THIS POLICY APPLIES TO THE FOLLOWING PERSONS:

This policy applies to all persons receiving non-emergency services from the St. Charles County Health Department. Contractors of the St. Charles County Department of Health are expected to implement this policy.

GENERAL STATEMENT OF POLICY:

All patients who are receiving medication or prescriptions for medication or who are undergoing intrusive procedures through the County Health Department are required to provide a valid informed consent before the medication, prescription or intrusive procedure may be administered.

PERSONS ELIGIBLE TO PROVIDE CONSENT:

1.] Any adult 18 years or [sic] age or older

2.] Any minor emancipated by reason of marriage or as a result of becoming a parent or guardian for themselves or for their minor child or minor ward

3.] Any parent for their minor child

4.] Any guardian for their ward

5.] Any minor for treatment for sexually transmitted diseases, a test for pregnancy or for alcohol or drug abuse treatment

WHAT CONSTITUTES INFORMED CONSENT:

The health care practitioner providing the information to the client shall provide information, in non-technical terms, as to the diagnosis on the patient [if any], the nature and purpose of the

proposed treatment, the risks and consequences of the proposed treatment, the probability that the proposed procedure will accomplish the intended result, treatment alternatives and finally, the prognosis if the proposed treatment is not given. The patient's medical chart should document that informed consent was received and who provided the consent.

INFORMED CONSENT WHERE TWO PROVIDERS ARE SEEING THE PATIENT:

Where the County Health Department is seeing a client in a team treatment approach with another health care provider, each provider should obtain consent procedures for the particular procedure or medication, or part thereof, that the provider will perform.

EFFECTIVE MAY 15TH
1995

REVISED STATUTES OF MISSOURI

431.061. Consent to surgical or medical treatment, who may give, when.—1. In addition to such other persons as may be so all authorized and empowered, any one of the following persons if otherwise competent to contract, is authorized and empowered to consent, either orally or otherwise, to any surgical, medical, or other treatment or procedures not prohibited by law;

(I) Any adult eighteen years of age or older for himself;

(2) Any parent for his minor child in his legal custody;

(3) Any minor who has been lawfully married and any minor parent or legal custodian of a child for himself, his child and any child in his legal custody;

(4) Any minor for himself in case of:

(a) Pregnancy, but excluding abortions;

(b) Venereal disease;

(c) Drug or substance abuse including those referred to in chapter 195, RSMo;

(5) Any adult standing in loco parentis, whether serving formally or not, for his minor charge in case of emergency as defined in section 431.063;

(6) Any guardian of the person for his ward;

(7) During the absence of a parent so authorized and empowered, any adult for his minor brother or sister;

(8) During the absence of a parent so authorized and empowered, any grandparent for his minor grandchild;

(9) "Absence" as used in (7) and (8) above shall mean absent at a time when further delay occasioned by an attempt to obtain

a consent may jeopardize the life, health or limb of the person affected, or may result in disfigurement or impairment of faculties.

2. For purposes of consent to hospitalization or medical, surgical or other treatment or procedures, a **"minor"** shall be defined as any person under eighteen years of age and an **"adult"** shall be defined as any person eighteen years of age or older.

3. The provisions of sections 431.061 and 431.063 shall be liberally construed, and all relationships set forth in subsection I of this section shall include the adoptive and step-relationship as well as the natural relationship and the relationship by the half blood as well as by the whole blood.

4. A consent by one person so authorized and empowered shall be sufficient notwithstanding that there are other persons so authorized and empowered or that such other persons shall refuse or decline to consent or shall protest against the proposed surgical, medical or other treatment or procedures.

5. Any person acting in good faith and not having been put on notice to the contrary shall be justified in relying on the representations of any person purporting to give such consent, including, but not limited to, his identity, his age, his marital status, and his relationship to any other person for whom the consent is purportedly given.

(L. 1971 H.B. 73 § 1, A.L. 1977 S.B. 48)

(1985) Section 431.062, RSMo, requires that a parent must expressly agree to pay for any treatment provided under this section, or he is not liable for such payment. Missouri Osteopathic Foundation v. Ott, (A.) 702 S.W. 2d 495.

PART 59—GRANTS FOR FAMILY PLANNING SERVICES

Subpart A—Project Grants for Family Planning Services

Sec.

59.1 To what programs do these regulations apply?

59.2 Definitions.

59.3 Who is eligible to apply for a family planning services grant?

59.4 How does one apply for a family planning services grant?

59.5 What requirements must be met by a family planning project?

59.6 What procedures apply to assure the suitability of informational and educational material?

59.7 What criteria will the Department of Health and Human Services (HHS) use to decide which family planning services projects to fund and in what amount?

59.8 How is a grant awarded?

59.9 For what purposes may grant funds be used?

59.10 What other HHS regulations apply to grants under this subpart?

59.11 Confidentiality.

59.12 Inventions or discoveries.

59.13 Additional conditions.

Authority: The provisions of this Subpart A are issued under sec. 8(c), 84 Stat. 1507, 42 U.S.C. 300a-4; sec. 8(c), 84 Stat. 1506, 42 U.S.C. 300.

Subpart A—Project Grants for Family Planning Services

§ 59.1 To what programs do these regulations apply?

The regulations of this subpart are applicable to the award of grants under section 1001 of the Public Health Service Act (42 U.S.C. 300) to assist in the establishment and operation of voluntary family planning projects. These projects shall consist of the educational, comprehensive medical, and social services necessary to aid individuals to determine freely the number and spacing of their children.

§ 59.2 Definitions.

As used in this subpart:

"Act" ;means the Public Health Service Act, as amended.

"Family" means a social unit composed of one person, or two or more persons living together, as a household.

"Low income family" means a family whose total annual income does not exceed 100 percent of the most recent Community Services Administration Income Poverty Guidelines (45 CFR 1080.2). "Low-income family" also includes members of families whose annual family income exceeds this amount, but who, as determined by the project director, are unable, for good reasons, to pay for family planning services. For example, unemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources.

"Nonprofit," as applied to any private agency, institution, or organization, means that no part of the entity's net earnings benefit, or may lawfully benefit, any private shareholder or individual.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of

Health and Human Services to whom the authority involved has been delegated.

"State" means one of the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, Northern Marianas, or the Trust Territory of the Pacific Islands.

§ 59.3 Who is eligible to apply for a family planning services grant?

Any public or nonprofit private entity in a State may apply for a grant under this subpart.

§ 59.4 How does one apply for a family planning services grant?

(a) Application for a grant under this subpart shall be made on an authorized form.

(b) An individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of the grant, including the regulations of this subpart, must sign the application.

(c) The application shall contain—

(1) a description, satisfactory to the Secretary, of the project and how it will meet the requirements of this subpart;

(2) a budget and justification of the amount of grant funds requested;

(3) a description of the standards and qualifications which will be required for all personnel and for all facilities to be used by the project; and

(4) such other pertinent information as the Secretary may require.

z 59.5 What requirements must be met by a family planning project?

(a) Each project supported under this part must:

(1) Provide a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (including infertility services and services for adolescents). If an organization offers only a single method of family planning, such as natural family planning, it may participate as part of a project as long as the entire project offers a broad range of family planning services.

(2) Provide services without subjecting individuals to any coercion to accept services or to employ or not to employ any particular methods of family planning. Acceptance of services must be solely on a voluntary basis and may not be made a prerequisite to eligibility for, or receipt of, any other service, assistance from or participation in any other program of the applicant.[2]

(3) Provide services in a manner which protects the dignity of the individual.

(4) Provide services without regard to religion, race, color, national origin, handicapping condition, age, sex, number of pregnancies; or marital status.

---

[2] Sec. 205 of Pub. L. 94-83 states: "Any (1) officer or employee of the United States, (2) officer or employee of any State, political subdivision of a State, or any other entity, which administers or supervises the administration of any program receiving Federal financial assistance, or (3) person who receives, under any program receiving Federal assistance, compensation for services, who coerces or endeavors to coerce any person to undergo an abortion or sterilization procedure by threatening such person with the loss of, or disqualification for the receipt of, any benefit or service under a program receiving Federal financial assistance shall be fined not more than $1,000 or imprisoned for not more than one year, or both."

(5) Not provide abortions as a method of family planning.

(6) Provide that priority in the provision of services will be given to persons from law-income families.

(7) Provide that no charge will be made for services provided to any person from a low-income family except to the extent that payment will be made by a third party (including a Government agency) which is authorized to or is under legal obligation to pay this charge.

(8) Provide that charges will be made for services to persons other than those from low-income families in accordance with a schedule of discounts based on ability to pay, except that charges to persons from families whose annual income exceeds 250 percent of the levels set forth in the most recent CSA Income Poverty Guidelines (45 CFR 1080.2) will be made in accordance with a schedule of fees designed to recover the reasonable cost of providing services.

(9) If a third party (including a Government agency) is authorized or legally obligated to pay for services, all reasonable efforts must be made to obtain the third-party payment without

* * *

project which was supported under section 1001, for less than 90 percent of its costs in fiscal year 1975. In that case, the grant shall not be for less than the percentage of costs covered by the grant in fiscal year 1975.

(c) No grant may be made for an amount equal to 100 percent of the project's estimated costs.

§ 59.8 How is a grant awarded?

(a) The notice of grant award specifies how long HHS intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for 3 to 5 years.

(b) Generally the grant will initially be for 1 year and subsequent continuation awards will also be for 1 year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the Government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 59.9 For what purpose may grant funds be used?

Any funds granted under this subpart shall be expended solely for the purpose for which the funds were granted in accordance with the approved application and budget, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles prescribed in Subpart Q of 45 CFR Part 74.

§ 59.10 What other HHS regulations apply to grants under this subpart?

Attention is drawn to the following HHS Department-wide regulations which apply to grants under this subpart. These include:

42 CFR Part 50—PHS Informal Grant Appeals Procedure

45 CFR Part 18 —Department Grant Appeals Process

45 CFR Part 19—Limitation on Payments or Reimbursement for Drugs

45 CFR Part 74—Administration of Grants

45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services' Implementation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and Procedures for Hearings Under Part 80

45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance.

45 CFR Part 90—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance.

42 CFR Part 122, Subpart E—Health System Agency Reviews of Certain Proposed Uses of Federal Health Funds.

§ 59.11 Confidentiality.

All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may not be disclosed only in summary, statistical, or other form which does not identify particular individuals.

§ 59.12 Inventions or discoveries.

(a) A project grant award is subject to the regulations of HHS as set forth in 45 CFR Parts 6 and 8, as amended. These regulations shall apply to any activity of the project for which grant funds are used, whether the activity is part of an approved project or is an unexpected byproduct of that project.

(b) The grantee and the Secretary shall take appropriate measures to assure that no contracts, assignments, or other arrangements inconsistent with the grant obligation are continued or entered into and that all personnel involved in the grant activity are aware of and comply with such obligations.

§ 59.13 Additional conditions.

The Secretary may, with respect to any grant, impose additional conditions prior to or at the time of any award, when in the Department's judgment these conditions are necessary to assure or protect advancement of the approved program, the interests of public health, or the proper use of grant funds.

APPENDIX F

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY
STATE OF MISSOURI

Cause No.

Division

COUNTY OF ST. CHARLES
Petitioner,

v.

MISSOURI FAMILY HEALTH COUNCIL, INC.

Serve: Susan Hilton
Registered Agent
1909 Southridge Dr.
P.O. Box 104475
Jefferson City, MO

Respondent.

PETITION FOR DECLARATORY JUDGMENT

COMES NOW, Petitioner, by and through counsel, and for its Petition for Declaratory Judgment, states as follows:

Parties

1. St. Charles County is a first-class charter county existing under the Constitution of the State of Missouri and its home rule charter.

2. The Missouri Family Health Council, Inc., is a not-for-profit corporation in good standing which administers, in Missouri, grants for family planning purposes from the Health and Human Services Department (hereinafter "Title X grants").

3. St. Charles County brings this action pursuant to Section 527.020 R.S.Mo. and Mo. R. Civ. Pro. 87.02(a), seeking a

declaratory judgment regarding the application for a Title X grant submitted by St. Charles County.

Background

4. St. Charles County Health Department is a department within the county government structure.

5. The St. Charles County Health Department operates two health clinics and dispenses prescriptive medications and performs intrusive medical procedures.

6. No medical procedure can be performed without the patient's informed consent; there are exceptions to this rule such as emergency situations.

7. Missouri law defines the age at which a child becomes an adult capable of contract, and, therefore, of consent as anyone 18 years of age or older or when the minor marries or herself becomes a parent.

8. Section 431.061 R.S.Mo. further provides that in instances of pregnancy (but excluding abortions), venereal disease, or drug/substance abuse, an unemancipated minor may self-consent to non-emergency surgical, medical or other treatment or procedures not prohibited by law.

9. Hospitals or operators of clinics may be found liable under the theory of respondeat superior if informed consent is not obtained from a patient.

10. Effective May 15, 1995, the St. Charles County Health Department developed a policy of informed consent for prescriptive medications and intrusive medical procedures; a copy of the policy is attached hereto as Exhibit "A".

11. The policy requires:

> All patients who are receiving medication or prescriptions for medication or who are undergoing intrusive procedures

through the County Health Department are required to provide a valid informed consent before the medication, prescription or intrusive procedure may be administered.

12. The policy mirrors state law in providing that the following persons are eligible to provide consent:

1) any adult 18 years of age or older;

2) any minor emancipated by reasons of marriage or as a result of becoming a parent or guardian for themselves or for their minor child or ward;

3) any parent for their minor child;

4) any guardian for their ward;

5) any minor for treatment for sexually transmitted diseases, a test for pregnancy or for alcohol or drug abuse treatment.

13. The policy regarding informed consent for prescriptive medications and intrusive medical procedures, formulated by the St. Charles County Health Department, is consistent with state law.

Operative Facts

14. For several years, the St. Charles County Health Department, a/k/a St. Charles County Nursing Service, applied for and received a Title X grant.

15. Many times, the application for Title X funds was granted although the application was not timely filed with the Council.

16. The previous contract between the parties was entered into on April 1, 1994, and expired on March 31, 1995.

17. On or about April 27, 1995, St. Charles County filed its application for Title X funds with the Missouri Family Health Council. (See, Exhibit "B", attached hereto)

18. On or about April 27, 1995, a letter was sent to the Council notifying the Council of the policy on informed consent; a copy of the policy accompanied the letter.

19. The Missouri Family Health Council sent a letter dated May 3, 1995, and addressed to the St. Charles County Executive, stating that due to the policy on informed consent for prescriptive medications and intrusive medical procedures, the Council would not consider the County's application for Title X funds. (See, letter attached hereto as Exhibit "C")

20. In a later letter, the Council stated that "§ 431.061 does not address prescriptive medication or intrusive procedures for minors. It merely addresses classes of conditions of which minors may consent to services." *(See,* letter attached hereto as Exhibit "D")

21. The application for Title X funds submitted by Petitioner was not considered by the Council solely because of the County's policy regarding informed consent for certain medical procedures.

22. Petitioner knows of no other health organization, municipal corporation, or other group which was denied consideration for Title X grants merely because that organization complies with Section 431.061 R.S.Mo.

Controversy

23. A present and actual controversy exists between Petitioner and Respondent regarding the interpretation and application of Section 431.061; and there is a justiciable issue, namely: Petitioner developed a policy regarding informed consent in compliance with Section 431.061 R.S.Mo. and contends that its application for Title X funds complies with state law and should be considered by the Council; whereas, the Council contends that the informed consent policy of the St. Charles County Health Department is not consistent with the law and, therefore, has

refused to consider the County's application for a Title X grant. Furthermore, the Council has disregarded Petitioner's application for a grant this year and shows no intent of considering applications filed by Petitioner as long as the County complies with Section 431.061 by giving effect to its policy regarding informed consent. *See*, letter to the County Executive of May 3, 1995, attached hereto as Exhibit "C".

24. Plaintiff is a person, as defined in Section 527.130 R.S.Mo., whose rights, status or other legal relationships are affected by a statute, and is entitled to have questions of construction arising under said statute determined, and is further entitled to obtain a declaration of rights, status or other legal relations thereunder, pursuant to and under Rules 87.02(a) and 87.05 of the Missouri Rules of Civil Procedure.

25. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays this Court to declare that the policy regarding informed consent is consistent with state law, specifically Section 431.061 R.S.Mo., and that, therefore, the policy is not a basis upon which the Council may refuse to consider the County's application for a Title X grant; and Plaintiff prays this Court for such orders or further relief that the Court may deem to be just and proper.

ST. CHARLES COUNTY
COUNSELOR

/s/ Stephanie Gastman
Joann Leykam, #29075
Stephanie Karr Gastman, #39593
Harold A. Ellis, #39944
100 North Third Street
St. Charles, Missouri 63301
(314) 949-7540

Attorneys for Petitioner

INFORMED CONSENT — ADULTS & MINORS
ST. CHARLES COUNTY HEALTH DEPARTMENT

THIS POLICY APPLIES TO THE FOLLOWING PERSONS:

This policy applies to all persons receiving non-emergency services from the St. Charles County Health Department. Contractors of the St. Charles County Department of Health are expected to implement this policy.

GENERAL STATEMENT OF POLICY:

All patients who are receiving medication or prescriptions for medication or who are undergoing intrusive procedures through the County Health Department are required to provide a valid informed consent before the medication, prescription or intrusive procedure may be administered.

PERSONS ELIGIBLE TO PROVIDE CONSENT:

1.] Any adult 18 years or [sic] age or older

2.] Any minor emancipated by reason of marriage or as a result of becoming a parent or guardian for themselves or for their minor child or minor ward

3.] Any parent for their minor child

4.] Any guardian for their ward

5.] Any minor for treatment for sexually transmitted diseases, a test for pregnancy or for alcohol or drug abuse treatment

WHAT CONSTITUTES INFORMED CONSENT:

The health care practitioner providing the information to the client shall provide information, in non-technical terms, as to the diagnosis on the patient [if any], the nature and purpose of the proposed treatment, the risks and consequences of the proposed

treatment, the probability that the proposed procedure will accomplish the intended result, treatment alternatives and finally, the prognosis if the proposed treatment is not given. The patient's medical chart should document that informed consent was received and who provided the consent.

INFORMED CONSENT WHERE TWO PROVIDERS ARE SEEING THE PATIENT:

Where the County Health Department is seeing a client in a team treatment approach with another health care provider, each provider should obtain consent procedures for the particular procedure or medication, or part thereof, that the provider will perform.

EFFECTIVE MAY 15TH
1995

EXHIBIT A

I.

TITLE PAGE

Applicant Organization Name: St. Charles County Nursing Service

Mailing Address: 305 North Kingshighway

St. Charles, MO 63301

Street Address (if different from above): _____

Program Period: From: April (month) 1 (day) 1995 (year) To: March (month) 31 (day) 1996 (year)

Funds Requested From:	Project Income	MFHC Title X	Total
	$184,817.00	$97,527.00	$282,344.00

Estimated Unduplicated Users to be served during Program Year (PY) '94-95: 2200

Listed all counties in Service Area: St. Charles, Lincoln, Warren, Montgomery, and St. Louis

Program Contact: Mary Joan Pruett, R.N.

Position/Title: Acting Clinic Coordinator

Telephone Number: 314-949-7400 FAX Number: 314-949-7403

Authorized Signature: _____
(Agency Executive Director/Board Chair)

Revised: 3/95

EXHIBIT
B

BEST AVAILABLE COPY

DELEGATE AGENCY BUDGET

Section A

Applicant: St. Charles County Nursing Service
Name
305 N. Kingshighway
Street Address
St. Charles, MO 63301
City State Zip

Budget Period
From April 1, 1995
Thru March 31, 1996

Completed By: M. Joan Pruett and Nancy Duncan

Phone: 1-314-949-7401

Budget Information

Section B — **Budget Summary**

a. Program	b Program Income	c MFHC (Title X)	d Total
Family Planning Services	184,817	97,527	282,344

Section C — **Program Income (Projected)**

Source of Funds	Amount	Source of Funds	Amount

Section C

Source of Funds	Amount	Source of Funds	Amount
a. Maternal/Child Health BG	40,861.00	g. Agency Contributions	
b. Title XIX, Medicaid	7,363.00	h. Donations	
c. Patient Collections	65,114.00	i. Other	
d. Other Third Party Reimbursement		j. Other	
e. State General Revenue Funds		k. In-Kind	
f. Local Funds	72,477.00	l. TOTAL PROGRAM INCOME	

Section D — Budget Categories

a Category	b Program Income	c MFIIC (Title X)	d Total
a. Personnel	97,364.00	58,236.00	155,600.00
b. Fringe Benefits	27,182.00	12,212.00	39,394.00
c. Travel	1,656.00	744.00	2,400.00
d. Equipment			0.00
e. Supplies	38,019.00	17,081.00	55,100.00
f. Contractual	3,726.00	1,674.00	5,400.00
g. Other	16,870.00	7,580.00	24,450.00
h. Total Direct Charges			0.00
h. Indirect Charges			0.00
j TOTAL EXPENSES	184,817.00	97,527.00	282,344.00

PERSONNEL COSTS

Budget Category Detail

a. Position Title	b. Annual Salary Rate	c. # of Months Budgeted	d. % of Time	e. Amount Program Income	f. Amount MFHC (Title X)	g. Total Amount Required
Community Health Nurse II	27,682.00	12	60%			16,609.00
Community Health Nurse II	27,682.00	12	100%			27,682.00
Nurse Practitioner II	44,144.00	12	100%			44,144.00
Medical Assistant	17,381.00	12	100%			17,381.00
Medical Assistant	19,284.00	12	100%			19,284.00
Community Health Nurse II	30,417.00	12	100%			30,417.00
Total Personnel						155,517.00
*Fringe Benefits (Rate 25.4%)						39,501.00
TOTAL PERSONNEL AND FRINGE						195,018.31

*Percent Total Fringe Benefits by Total Salary

NON-PERSONNEL COSTS

B3

Budget Category Detail

Category	Amount Program Income	Amount MFHC (Title X)	Total Amount Required
c. Travel			
Local Travel			2,000.00
Out of Area Travel			400.00
TOTAL TRAVEL			2,400.00
d. Equipment			0.00
TOTAL EQUIPMENT			0.00
e. Supplies			
Office			2,100.00
Medical			23,000.00
Depo-Provera/Norplant			
Other Medical			30,000.00
TOTAL SUPPLIES			55,100.00
f. Contractual			
Paps			14,250.00
Medical Services			2,400.00
Consultants			
Other Contractual			3,000.00
TOTAL CONTRACTUAL			24,450.00
g. Other			
Building Rent			
Utilities			
Telephone			2,925.00
Postage			1,800.00
Printing			1,500.00
Staff Training & Education			1,800.00
Subscriptions & Dues			2,000.00
Educational Materials			1,000.00
Building & Content Insurance			
Medical Malpractice Insurance			
Equipment Rental			
Equipment Maintenance			400.00
Legal Fees			
Audit Fees			
TOTAL OTHER			11,335.00

BUDGET NARRATIVE

(Use Additional Sheets if Necessary)

For each line item of every budget category, describe in detail what these expenditures are and why they are necessary.

---

1. Personnel costs reflect a 3 1/2 % plus $1,000.00 increase in salaries and an increase in nurse practitioners time and salary. Fringe benefits have increased per person reflecting salary increase.

2. We had to increase our nurse practitioners salary in order to be competitive.

3. The additional P.T. Nurse practitioner will be available to do increased numbers of clients expected with the coming of Medicaid managed care and contracting with HMO's for Family Planning services.

4. We're being expected to increase STD services through our Family Planning Clinics by the Bureau of STD's which will require more staff time.

5. Contraceptive costs will increase due to offering depo provera which also add costs of supplies necessary to administer injections, i.e., alcohol sponges, syringes and cotton balls. The numbers of pregnancy tests are expected to increase.

6. Contractual costs have increased due to cleaning professional services coming from the Family Planning budget to clean the Wentzville site.

III.

DELEGATE AGENCY CONTACT INFORMATION

Chief Executive Officer

Name: Nancy L. Duncan, R.N., CHN IV
Title: Administrator
Mailing Address: 305 N. Kingshighway, St. Charles, MO 63301
Phone Number: 1-314-949-7400 Fax#: 949-7403

Primary Contact for Family Planning

Name: Mary Joan Pruett, R.N.
Title: Acting Family Planning Coordinator
Mailing Address: 305 N. Kingshighway, St. charles, MO 63301
Phone Number: 1-314-949-7401 Fax #: 1-314-949-7403

Primary Contact for Program Fiscal Management

Name: Debbie Salvo
Title:
Mailing Address: 201 N. Second, St. Charles, MO 63301
Phone Number: Fax #:

Family Planning Bookkeeper

Name: Same as Fiscal Management Contact
Title:
Mailing Address: Fax #:
Phone Number:

Primary Contact for Training/Education Services

Name: Same as Family Planning Contact
Title:
Mailing Address: Fax #:
Phone Number:

Primary Contact for Clinical Services

Name: Same as Family Planning Contact
Title:
Mailing Address: Fax #:
Phone Number:

Primary Contact for CVR's/Data Reporting

Name: Darleen Gutermuth
Title: Clerk II
Mailing Address: 305 N. Kingshighway, St. Charles, MO 63301
Phone Number: 1-314-949-7401 Fax#: 1-314-949-7403

IV.

CLINIC AND SERVICE AREA INFORMATION

A. Complete the section below.

Delegate Agency: St. Charles County Nursing Service

List Clinic Sites, Addresses and Phone Numbers, (include name of County), and name of Contact Person	Clinic Schedule (include days & times)
Site St. Charles County Family Planning Clinic - St. Charles Address 305 N. Kingshighway City/State/Zip St. Charles, MO 63301 County St. Charles Phone Number 1-314-949-740 Fax Number 1-314-949-7403 Contact Name Title	Office Hours: Monday: 8:30 a.m. to 5:00 p.m. Tuesday: 8:30 a.m. to 5:00 p.m. Wednesday: 8:30 a.m. to 7:00 p.m. Thursday: 8:30 a.m. to 5:00 p.m. Friday: 8:30 a.m. to 5:00 p.m. Clinic Sessions (days and hours): Mondays: 9:00 a.m. to 1:40 p.m. Wednesday: 10:00 a.m. to 6:30 p.m.
Site St. Charles County Family Planning Clinic - Wentzville Address 1601 W. Pearce Blvd. City/State/Zip Wentzville, MO 63385 County St. Charles Phone Number 1-314-327-7196 Fax Number Contact Name Title	Office Hours: One Monday a month: 1:00 pm to 8 pm Tuesday: 8:30 a.m. to 5:00 p.m. Friday: 8:30 a.m. to 12:00 noon Clinic Sessions (days and hours): One Monday a month: 1:00 p.m. - (varies) 8:00 p.m. Tuesday: 8:30 a.m. to 5:00 p.m.
Site Address City/State/Zip County Phone Number Fax Number Contact Name Title	Office Hours: Clinic Sessions (days and hours):

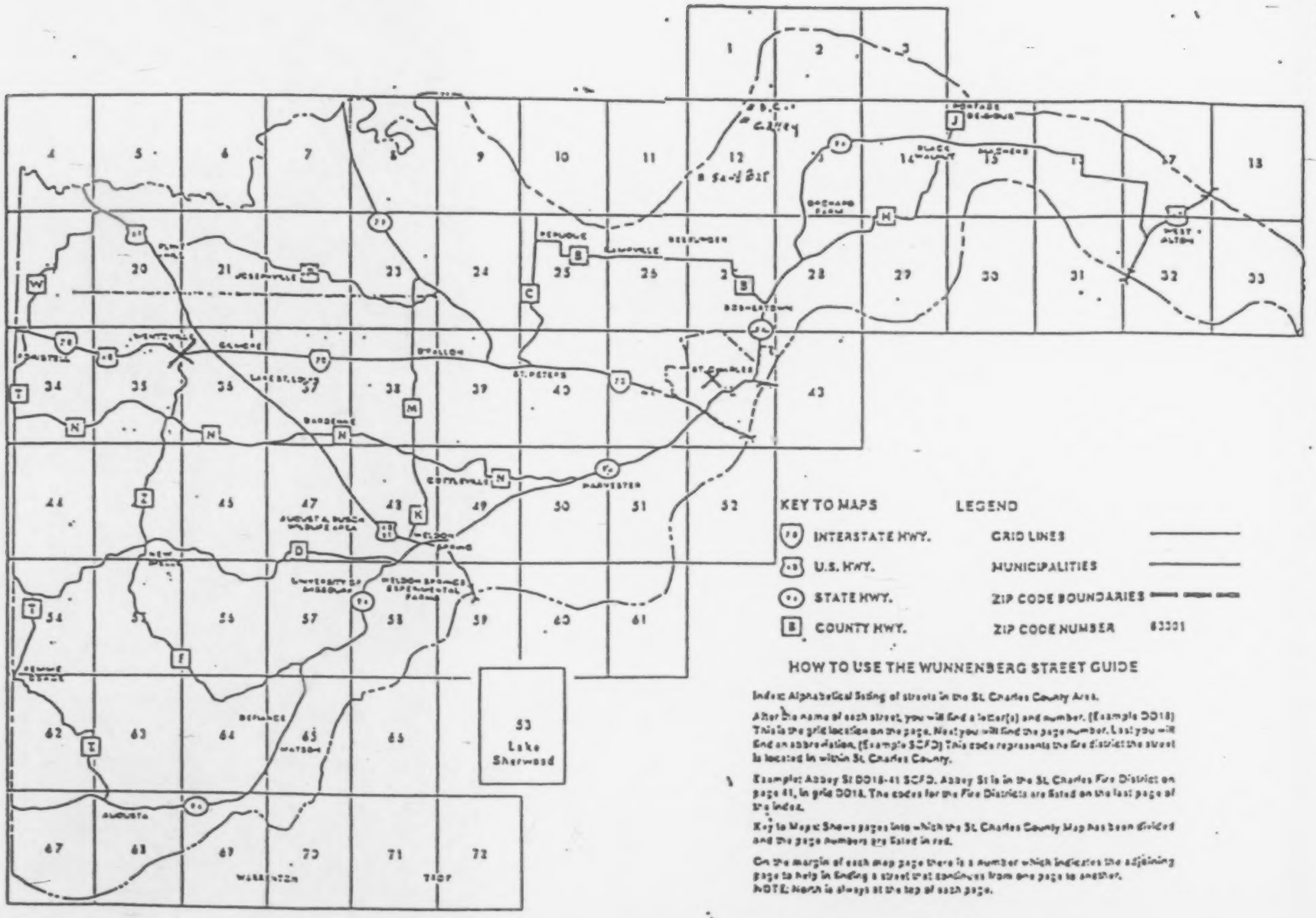
(Copy this page as necessary for additional sites)

NOTE: 3/8/95 WE HOPE TO HAVE CLINIC HOURS EVERYDAY SOON.

Revised 2/95

List Clinic Sites	FP Education & Counseling	Physical Assessment/Exam	Lab Testing	Contraceptive Supplies	Depo-Provera	Norplant	Sterilization Services	Infertility	Natural Family Planning	Male Services	Special Programs for Adolescents	STD Testing	STD Treatment	HIV Testing	GYN Problems	Community Education/ Outreach
St. Charles	X	X	X	X	X	R-O	R-O	R-O	R-O	R-O	R-O	X	X	X	R-O X	R-O
Wentzville	X	X	X	X	X	R-O	R-O	R-O	R-O	R-O	R-O	X	X	X	R-O X	R-O

Key: (X) Services Available on-site
(R-A) Referral within delegate agency
(R-O) Referral outside delegate agency


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
43
44
45
46
47
48
49
50
51
52
53
Lake Sherwood
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
WARRENTON
TROY
WENTZVILLE
FORISTELL
HARVESTER
O'FALLON
ST. PETERS
ST. CHARLES
DARDENNE
CORTLEVILLE
JOSEPHVILLE
DEFIANCE
BOONSLICK
AUGUSTA
WEST ALTON
MELVILLE
BLACK
WINDSOR
BOONSLICK
ELSBERRY
BEECHWOOD
BEECHWOOD
PLANK ROAD
BOONSLICK
BOONSLICK
BOONSLICK

St. Charles County Health Department
65 North Kingshighway
St. Charles, Missouri 63301
1-800-822-4012
Fax 314-949-7403

Community Health Nurse
314-949-7400

Environmental Sanitarian
314-949-7404

WIC Program
314-949-7402

Dr. Roy Westerfeld, M.D., Health Commissioner

St. Charles County Nursing Service is not currently performing or arranging for sterilization with Title X funds. Therefore, I request that the quarterly reporting requirements be waived for the contract year April 1, 1995 - March 31, 1996.

If our status on sterilization changes after April 1, 1995, we will notify MFHC and at that time begin reporting as required.

Signature of Authorized Official

April 26, 1995
Date

VI.

DESCRIPTION OF NEED

(Use Additional Sheets if Necessary)

In narrative form, describe the need for family planning services in the communities to be served. Data should include AGI-Women in Need figures (enclosed in packet) and relevant maternal and child health indicators (e.g., rates for inadequate prenatal care, infant mortality, teen pregnancy, inter-partum spacing, etc.)

The Alan Guttmacher Institute report shows that there was 57,300 women of reproduction age (13-44) in St. Charles County. Of these 27,700 represent women at risk of unintended pregnancy. 1600 of these women are below the age of 20 years. 3610 of these same women are under 20 years of age.

The 1995 estimate of women of reproductive age (13-44) is 70,543 in St. Charles County. Of this number 15,864 (22%) are below the age of 20 years. In 1993 adolescents who had received inadequate care accounted for 25.9% of the births to adolescents. Birth rate to adolescents was 38.7/1000 in 1993. In that year 4.5% of the births to adolescents was low birth weight and 76.7 % were to unmarried girls.

Although figures available at this time reflects only those women in need, it is the goal of the St. Charles County Planning Clinic to empower both men and women of reproductive age to have active participation with their partner in planning family size and spacing. It is also a goal to encourage adoption of healthy behaviors that reduce risk factors and to avoid risks. The risk of acquiring syphilis and HIV infection is rising in St. Charles County and the client must be alerted to these risks as a part of the comprehensive and confidential care provided by the clinic.

While not all unintended pregnancies can be considered unwanted or can be considered to produce children who are neither loved or nurtured, each of these pregnancies carries the potential for its own crisis. Unintended pregnancies are known to result in expensive health care problems. Infant mortality or morbidity caused by inadequate prenatal care, declining maternal health due to close inter-partum spacing, and inadequate well child care are examples. The resulting social problems are also staggering.

The burdens placed on the health care system by persons in need may be caused by knowledge deficit, significant social problems, or financial compromise. The clients impacted by these problems could potentially double the in-need population by births from unintended pregnancies. The St. Charles County Family Planning clinic has only 12% Medicaid clients. The clinic caseload has 52 percent of clients below 100 % of poverty and 32 percent falls in the 25-50% pay category. Clearly there are many clients who will not have their needs met though Medicaid Managed Care. The number of child bearing age persons at risk for unintended pregnancy in St. Charles County mandate the continuation of funding for this care.

COMMUNITY EDUCATION AND OUTREACH

1. Conduct 4 education programs in the community on family planning and clinic services.

2. Advertise family planning services by participating in the following (Please check all that apply.)

[x]	Yellow Pages	[ ]	Radio Spots
[ ]	PSA's	[ ]	TV Spots
[ ]	Newspaper	[ ]	Other _____

CLINICAL RECORDS AND INDICATORS

1. Conduct 80 quality assurance reviews, focusing on

   a) Review records to assure that at least 90% of patients under 20 that receive family planning services have documentation of services.

   b) Review records to assure at least 90% of patients had a blood pressure reading at their last initial or annual exam. In PY 95-96 100% were in compliance.

   c) Review records to assure 100% follow-up of patients with a Class III, IV or V Pap smear. This includes documentation of contacts and outcome of referral, treatment or disposition of patient. In PY 95-96 100% were in compliance.

2. Hold quarterly meetings of our agency's quality assurance committee.

TRAINING

1. Each staff member will participate in one or more of training sessions in PY95-96.

2. 3 of in-service training sessions are scheduled for PY95-06.

3. Our agency anticipates sending one nurse(s) for nurse practitioner training in PY95-96.

4. The training budget for PY95-96 is $800.

VII.

NATIONAL PRIORITIES

Please indicate how your agency plans to address each of the National Title X Priorities (copy attached) in PY95-96. Your progress toward addressing these issues must also be included in future progress reports.

1. Increasing outreach to women not likely to seek services, including homeless persons, disabled persons, substance abusers, and adolescents. Send information and/or speakers to each of the agencies who serve the persons e.g. homeless shelters, substance abuse agencies, Youth In Need, Women's Crisis Shelters, schools and other agencies that service the handicapped. Our agency is handicapped accessible.

2. Expanding the comprehensiveness of reproductive health services, including STD and cancer screening and prevention, increased involvement of male partners, HIV prevention education and counseling and substance abuse screening and referral. Establish a STD clinic including Family Planning services to both males and females. The County Health Unit is currently offering HIV and syphilis screening to both males and females. Family clinic is currently doing STD screenings. Teach self breast exam to all clients.

3. Serving adolescents, including more community education, emphasis on postponement of sexual activity, and more accessible provision of contraceptive counseling and contraception. Teaching regarding the fact that the more sexual partners one has, the greater the risk for STD/HIV and cancer. Teach to use barrier methods or abstain to prevent STD/HIV. Offer hours convenient for teenagers and working persons. Work with school nurses to get prevention information to the students.

4. Eliminating disincentives to provide high-cost but highly effective contraceptives such as Norplant and Depo-Provera, serving high risk (and high-unit cost) clients, and providing nonrevenue-generating services such as community education and prevention services. We are planning to offer Depo Provera soon. We are enlisting a community based organization for outreach(The MORE organization) to low income families.

5. Emphasizing training and retention of family planning nurse practitioners, particularly minority nurse practitioners and nurse practitioners serving disadvantaged and medically under served communities. Current employees have been offered the opportunity for financial assistance for advanced training as nurse practitioners. St. Charles County has increased salary ranges for nurse practitioners in order to recruit and retain nurse practitioners. Benefits are available to anyone working 60% or more time.

VIII.

SPECIAL INITIATIVES/INNOVATIVE PROGRAMS

If you would like to request additional funds for an innovative program which would be in keeping with the National Priorities, please submit a brief (one page) narrative description of the program and a total budget request. Do <u>not</u> include the money requested for this program in the budget section of the CIP. We will attempt to fund meritorious programs as funds become available. If funds do become available, we will contact you for additional detailed program and budget information.

IX.

WORK PLAN

The following section will describe several functional areas that you will need to respond to. Please identify the statement that accurately reflects your program or fill in the blanks with the appropriate number.

PROGRAM PLANNING AND EVALUATION

1. Review at least 50 client evaluations of the program.

2. Monitor any subcontractors for program compliance with MFHC and agency guidelines. A subcontractor provides family planning services with your money or supplies and generates USERS for your program. Do not include if your staff directly delivers family planning services at a non-agency or program site.

LIST SUBCONTRACTS AND DATES OF PROGRAM REVIEW

1. _____ Date ____/____/____
2. _____ Date ____/____/____
3. _____ Date ____/____/____
4. _____ Date ____/____/____
5. _____ Date ____/____/____
6. _____ Date ____/____/____

3. Attach a copy of any subcontracts.
4. Attach a copy of the monitoring tool.
5. Assure that patient/staff ratio is appropriate and efficient.

   In PY94-95 there were 2051 users to 5 staff full-time equivalents (FTE). We project for PY95-96 2200 users to 5 staff FTE.

PERSONNEL MANAGEMENT

1. Conduct 5 staff evaluations to be completed by 3/31/95. We have empoyee slots that aren't billed at present.

   Person(s) responsible for staff evaluations:

   Nancy Duncan

   _____

   _____

BEST AVAILABLE COPY

FINANCIAL MANAGEMENT (Circle correct wording)

1. Increase/maintain revenue from patient fees from $52,000 in PY94-95 to $55,000 in PY95-96.

2. Increase/maintain fee collection percent (amount of fees collected divided by the amount charged) from 90% in PY94-95 to 90% in PY95-96. Exclude all donations (i.e., donations from patients below 100% of poverty).

3. Increase/maintain total program revenue from $184,817 in PY94-95 to $282,344 in PY95-96.

4. Arrange for an independent audit to be conducted by ____/____/____. St. Charles County arranges for independent audit each year - including our agency.

CLINICAL SERVICES (Circle correct wording)

1. Increase/maintain the number new and annual patients from 2051 in PY94-95 to 2200 in PY95-96.

   PY95-96 Initial Patients 700. PY95-96 Annual Patients 1500

2. Increase/maintain the number of USERS (total unduplicated patients) from 2051 in PY94-95 to 2200 in PY95-96.

3. Increase/maintain the number of teenage patients from 585 in PY94-95 to 700 in PY95-96.

4. Increase/maintain the number of patients below 150% of poverty from 1737 in PY94-95 to 2000 in PY95-96.

5. Increase/decrease the number of family planning visits per year from 2.0 to 3.6 due to increase per Depo.

6. Provide 1650 total vials of Dep-Provera to clients.

7. Provide 1024 vials of the above total to clients at or below 100% of poverty.

8. Implant 0 total Norplants.

9. Implant 0 of the above total in clients at or below 100% of poverty.

10. Clinic records will be checked for completeness daily, in addition 20 # of records will be audited for specific contraceptive and medical management issues 4 times per year.

State of Missouri

EXEMPTION FROM MISSOURI SALES AND USE TAX ON PURCHASES

ISSUED TO:

ST CHARLES COUNTY
110 N SECOND ST
ST CHARLES MO 63301

MISSOURI TAX I.D. NUMBER: 12590143

EFFECTIVE DATE: 06/08/93

EXPIRATION DATE: 06/08/98

YOUR APPLICATION FOR EXEMPTION FROM SALES/USE TAX ON YOUR PURCHASES HAS BEEN APPROVED PURSUANT TO CHAPTER 144, RSMO. THIS LETTER IS ISSUED AS DOCUMENTATION OF YOUR EXEMPT STATUS.

PURCHASES BY YOUR ORGANIZATION OR AGENCY WILL NOT BE SUBJECT TO SALES OR USE TAX, IF SUCH PURCHASES ARE WITHIN THE CONDUCT OF YOUR EXEMPT FUNCTIONS AND ACTIVITIES. PURCHASES MUST BE PAID FOR FROM FUNDS OF THE ORGANIZATION OR AGENCY. ALL SELLERS OR VENDORS MUST BE FURNISHED A COPY OF THIS EXEMPTION LETTER. THIS EXEMPTION CANNOT BE USED ON PURCHASES BY INDIVIDUALS OR AGENTS FOR THEIR OWN PERSONAL USE.

SALES MADE BY YOUR ORGANIZATION ARE NOT EXEMPT FROM SALES TAX. SALES MADE BY YOUR ORGANIZATION OR AGENCY ARE SUBJECT TO APPLICABLE STATE AND LOCAL SALES TAX. SHOULD YOU ENGAGE IN THE BUSINESS OF SELLING TANGIBLE PERSONAL PROPERTY OR TAXABLE SERVICES AT RETAIL, YOU WILL BE REQUIRED TO OBTAIN A MISSOURI RETAIL LICENSE.

AN AGENT OF, OR CONTRACTOR FOR, AN EXEMPT ORGANIZATION OR AGENCY CANNOT CLAIM OR BENEFIT FROM YOUR ORGANIZATION'S OR AGENCY'S EXEMPT STATUS. SALES TO CONTRACTORS WHO PURCHASE CONSTRUCTION MATERIALS TO FULFILL THEIR CONTRACTS WITH YOUR ORGANIZATION OR AGENCY ARE SUBJECT TO SALES TAX ON ALL SUCH PURCHASES, UNLESS THE MATERIALS ARE DIRECTLY BILLED TO YOUR ORGANIZATION AND PAID FOR FROM YOUR ORGANIZATION'S FUNDS.

THIS EXEMPTION IS NOT PERMANENT. IT IS SUBJECT TO REVIEW BY THE DIRECTOR OF REVENUE, AND IT EXPIRES ON THE DATE GIVEN ABOVE. IF IT IS DETERMINED THAT THIS ORGANIZATION OR AGENCY CEASES TO QUALIFY AS AN EXEMPT ORGANIZATION OR AGENCY, THIS EXEMPTION LETTER WILL CEASE TO BE VALID, AND PURCHASES MADE BY THE ORGANIZATION OR AGENCY WILL BE SUBJECT TO THE SALES/USE TAX.

THIS EXEMPTION IS NOT ASSIGNABLE OR TRANSFERABLE. IT IS FOR SALES/USE TAXES ONLY AND IS NOT AN EXEMPTION FROM REAL OR PERSONAL PROPERTY TAXES.

ANY ALTERATION TO THIS EXEMPTION LETTER RENDERS IT INVALID.

ST. CHARLES COUNTY FAMILY PLANNING
INCOME GUIDELINES
1995

FAMILY SIZE	0% 100% OF POVERTY	25% 101% - 125% OF POVERTY	50% 126% - 150% OF POVERTY	75% 151% - 200% OF POVERTY	100% 201% - 250% OF POVERTY	251% OF POVERTY
1	144	145-180	181-215	216-287	288-354	360+
2	193	194-241	242-289	290-386	387-482	483+
3	242	243-303	304-363	364-484	485-605	606+
4	291	292-364	365-437	438-583	584-728	729+
5	341	342-426	427-511	512-681	682-851	852+
6	390	391-487	488-585	586-780	781-975	976+
7	439	440-549	550-659	660-878	879-1098	1099+
8	488	489-610	611-732	733-977	978-1221	1222+

FAMILY SIZE	100% OF POVERTY	101% - 125% OF POVERTY	126% - 150% OF POVERTY	151% - 200% OF POVERTY	201% - 250% OF POVERTY	251% OF POVERTY
1	7470	7471-9338	9339-11205	11206-14940	14941-18675	18676
2	10030	10031-12538	12539-15045	15046-20060	20061-25075	25076
3	12590	12591-15738	15739-18885	18886-25180	25181-31475	31476
4	15150	15151-18938	18939-22725	22726-30300	30301-37875	37876
5	17710	17710-22138	22139-26565	26566-35420	35421-44275	44276
6	20270	20271-25338	25339-30405	30406-40540	40541-50675	50676
7	22830	22831-28538	28539-34245	34246-45660	45661-57075	57076
8	25390	25391-31738	31739-38085	38086-50780	50781-63475	63476

OMB Approval No. 0937-0189
Expiration Date: March 31, 1995

CERTIFICATIONS

1. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The undersigned (authorized official signing for the applicant organization) certifies to the best of his or her knowledge and belief, that the applicant, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the applicant not be able to provide this certification, an explanation as to why should be placed after the assurances page in the application package.

The applicant agrees by submitting this proposal that it will include, without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" (Appendix B to 45 CFR Part 76) in all lower tier covered transactions (i.e., transactions with subgrantees and/or contractors) and in all solicitations for lower tier covered transactions.

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The undersigned (authorized official signing for the applicant organization) certifies that it will provide a drug-free workplace in accordance with 45 CFR Part 76 by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—
  (1) The dangers of drug abuse in the workplace;
  (2) The grantee's policy of maintaining a drug-free workplace;
  (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a) above;

(d) Notifying the employee in the statement required by paragraph (a), above, that, as a condition of employment under the grant, the employee will—
  (1) Abide by the terms of the statement; and
  (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2), above, from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), above, with respect to any employee who is so convicted—

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f), above.

3. CERTIFICATION REGARDING LOBBYING

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (non-appropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING $100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the applicant organization) certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure."

4. CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)

The undersigned (authorized official signing for the applicant organization) certifies, to the best of his or her knowledge and belief, that the statements herein are true, accurate, and complete, and agrees to comply with the Public Health Service terms and conditions if an award is issued as a result of this application. Willful provision of false information is a criminal offense (Title 18, U.S. Code, Section 1001). Any person making any false, fictitious, or fraudulent statement may, in addition to other remedies available to the Government, be subject to civil penalties under the Program Fraud Civil Remedies Act of 1986 (45 CFR Part 79).

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

BEST AVAILABLE COPY

TITLE X PROGRAM PRIORITIES

- Increasing outreach to women not likely to seek services, including homeless persons, disabled persons, substance abusers, and adolescents

- Expanding the comprehensiveness of reproductive health services, including STD and cancer screening and prevention, increased involvement of male partners, HIV prevention education and counseling, and substance abuse screening and referral

- Serving adolescents, including more community education, emphasis on postponement of sexual activity, and more accessible provision of contraceptive counseling and contraception

- Eliminating disincentives to provide high-cost but highly effective contraceptives such as Norplant and Depo-Provera, serving high risk (and high-unit cost) clients, and providing nonrevenue-generating services such as community education and prevention services

- Emphasizing training and retention of family planning nurse practitioners, particularly minority nurse practitioners and nurse practitioners serving disadvantaged and medically underserved communities.

Missouri Family Health Council, Inc.

Family Planning and Management Services

1909 Southridge Drive, P.O. Box 104475,
Jefferson City, Missouri 65110-4475
314/636-4060, Fax 636-2045

Susan Hilton, Executive Director

May 3, 1995

Mr. Joe Ortwerth, County Executive
St. Charles County
100 North Third Street, Suite 318
St. Charles, Missouri 63301

Dear Mr. Ortwerth,

We have received the St. Charles County Nursing Service's application for Title X funds for the program period April 1, 1995 to March 31, 1996, and your letter notifying us of the policy on informed consent accompanied by a copy of this policy. We understand this policy will go into effect on May 15, 1995.

Please be advised that the policy on informed consent as written is in violation of Sections 59.5 and 59.11 of the Title X regulations; and Section 8.7 of the Title X Guidelines (copies attached). We regret to inform you that we cannot consider the application for Title X funds for the delivery of family planning services in St. Charles County under these circumstances. All Title X regulations and guidelines must be adhered to in order to be eligible to receive the federal funds.

Close-out procedures for prior year contracts between Missouri Family Health Council, Inc. and St. Charles County Nursing Service will be as follows:

1. Annual St. Charles County financial and compliance audits disclosing the revenues and expenditures related to the Title X contract for the period April 1, 1994 to March 31, 1995 must be submitted to Missouri Family Health Council as soon as they are completed.

2. Any unobligated federal funds received during the last contract year (April 1, 1994 - March 31, 1995) must be returned to Missouri Family Health Council as soon as possible, but not later than June 30, 1995.

3. A list of all equipment purchased with Title X funds or grant related income during all contract periods funded by the Missouri Family Health Council, Inc. and the Family Planning Council of St. Louis must be submitted to Missouri Family Health Council by June 30, 1995. The disposition of this equipment will be determined in consultation with our federal Regional Office.

We are concerned that clients who have received family planning services at the St. Charles County Nursing Service will not have their services interrupted. We will advise the staff of the St. Charles County Nursing Service as to which organization will be providing Title X services in St. Charles County so that clients may be referred for continued care.

If you have any questions about any of the preceding information, pleased [sic] do not hesitate to contact me.

Sincerely,

/s/ Susan Hilton
Susan Hilton
Executive Director

EXHIBIT
C

Missouri Family Health Council, Inc.

Family Planning and Management Services

1909 Southridge Drive, P.O. Box 104475,
Jefferson City, Missouri 65110-4475
314/636-4060, Fax 636-2045

Susan Hilton, Executive Director

May 23, 1995

Mr. Joe Ortwerth
St. Charles County
100 North Third Street, Suite 18
St. Charles, Missouri 63301

Dear Mr. Ortwerth:

I am writing in response to your letter of May 12, 1995 concerning the policy on informed consent adopted by the St. Charles County Nursing Service, and its non-compliance with Title X regulations and guidelines.

Please note that Section 59.5(a)(4) requires that "Each project supported under this part must provide services without regard to religion, race, color, national origin, handicapping condition, *age*, sex, number of pregnancies, or marital status. Section 59.11 is very clear in stating that "all information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held *confidential* and must not be disclosed without the individual's consent; except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality.

The St. Charles County Nursing Service's policy violates Title X regulations and guidelines in that it requires consent of a parent or guardian for all unemancipated clients under 18 years of age to receive family planning services. It seems clear that St. Charles County Nursing Service could not protect the confiden-

tiality of its clients and treat all information as to personal facts and circumstances of the client as confidential if a parent or guardian must first give consent for the minor to receive services.

Contrary to your letter, §431.061, RSMo. 1994 does not address prescriptive medication or intrusive procedures for minors. It merely addresses classes of conditions for which minors may consent to services. Further, your policy limits treatment of minors to "a test for pregnancy" and does not include "family planning methods" and "counseling" as described on page two of your letter.

We were very pleased to learn that the St. Charles County Nursing Service will continue to provide family planning services, and appreciate the commitment of the county government to support this very important service to women. Since the range of services minors will be able to receive without parental consent are limited, we hope the nursing staff will refer those minors who are unable to obtain parental consent for services to the Title X organization in St. Charles County. We will keep the nursing staff informed as services are developed.

As you are aware, the contract between Missouri Family Health Council and the St. Charles County Nursing Service expired on March 31, 1995. Please fell free to contact me if you have any questions about the close-out procedures addressed in my letter of May 3, 1995.

Sincerely,

/s/ Susan Hilton
Susan Hilton
Executive Director

SH/ds

EXHIBIT
D

Supreme Court, U.S.
FILED
JUL 23 1997
CLERK

No. 97-43

In The

Supreme Court of the United States

October Term, 1996

ST. CHARLES COUNTY, MISSOURI,

Petitioner,

vs.

MISSOURI FAMILY HEALTH COUNCIL,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

LORI J. LEVINE
CARSON & COIL, P.C.
515 East High, P.O. Box 28
Jefferson City, MO 65102
573-636-2177
Attorneys for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

12pp

QUESTIONS PRESENTED FOR REVIEW

1. Do the federal courts have jurisdiction over an action which seeks to force the consideration of an application for Title X funds under 42 U.S.C. § 300 when the applicant requires parental consent for the provision of services to minors where state law requires consent for those particular services?

2. Did the District Court properly dismiss the complaint because the application for Title X funds violated the provisions of Title X by requiring parental consent for invasive procedures or provision of prescription medication for adolescents?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

REASONS FOR DENYING A WRIT 2

CONCLUSION 8

TABLE OF AUTHORITIES

Page

CASES

County of St. Charles, Missouri v. Missouri Family Health Council, 107 F.3d 682 (8th Cir. 1997) 2

Doe v. Pickett, 480 F.Supp. 1218 (D.C. S.D. WV 1979) 6

Federated Department Stores, Inc. v. Moitie, 452 U.S. 394 (1981) 2

Jane Does v. State of Utah Department of Health, 776 F.2d 253 (10th Cir. 1985) 7

New York v. Heckler, 719 F.2d 1191 (2d Cir. 1983) 7

Planned Parenthood Association of Utah v. Mattheson, 582 F.Supp. 1001 (D. Utah C.D. 1983) 5, 6

Planned Parenthood Association of Utah v. Schweiker, 700 F.2d 710 (D.C. Cir. 1983) 6

Planned Parenthood Federation of America, Inc. v. Heckler, 712 F.2d 650 (D.C. Cir. 1983) 7

STATUTORY AND REGULATORY PROVISIONS

§ 431.061 R.S.Mo 1

42 C.F.R. 59.5 .....3, 6

42 C.F.R. 59.11 3

42 U.S.C. § 300 ..... 1, 2, 4

Title X Guidelines § 8.7 3

STATEMENT OF THE CASE

Petitioner is a first class charter county, and Respondent is a not-for-profit corporation which administers grants for family planning services from the Health and Human Services Department pursuant to 42 U.S.C. § 300. Petitioner St. Charles County operates two health clinics using Title X funds offering family planning services including prescription medications and intrusive medical procedures. St. Charles County had been a recipient of Title X funds administered by Missouri Family Health Council prior to April 1995 when they filed the application in question which included a new policy on informed consent requiring consent from parents of minors as a precondition to receipt of prescription medication or intrusive procedures. The Missouri Family Health Council refused to consider St. Charles County's application based upon the County's adoption of the policy of parental consent. Nowhere in the complaint or attachments thereto is there any suggestion that the County was applying as a provider of single method family planning. The Missouri Family Health Council does not dispute that § 431.061 R.S.Mo. requires parental consent for certain medical procedures such as provision of prescription medication or intrusive procedures. The County's complaint, in addition to seeking a declaration as to the interpretation of § 431.061, R.S.Mo., asks the court to declare that Missouri Family Health Council could not use the parental consent rule adopted by the county as a reason for denying their application for federal funds.

REASONS FOR DENYING THE WRIT

I. THE FEDERAL COURTS HAVE JURISDICTION OVER AN ACTION WHICH SEEKS TO FORCE THE CONSIDERATION OF AN APPLICATION FOR TITLE X FUNDS UNDER 42 U.S.C. § 300 WHEN THE APPLICANT REQUIRES PARENTAL CONSENT FOR THE PROVISION OF SERVICES TO MINORS EVEN THOUGH STATE LAW REQUIRES CONSENT FOR THOSE PARTICULAR SERVICES.

What Petitioner sought to accomplish by filing this lawsuit was to qualify for Title X funds administered by Respondent. Qualification for those funds is determined by 42 U.S.C. § 300. Therefore, this case arises under the laws of the United States. Petitioner's attempt to interject a state law question is simply artful pleading which cannot remove the case from federal jurisdiction. *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 397 n. 2, 101 S.Ct. 2424, 2427 n. 2, 69 L.Ed. 2d 103 (1981).

Petitioner's prayer in their Complaint is as follows:

> Wherefore, plaintiff prays this court to declare that the policy regarding informed consent is consistent with state law, specifically § 431.061 R.S.Mo., *and that, therefore,* the policy is not a basis upon which the Council may refuse to consider the county's application for a Title X grant; . . . [Emphasis ours.], *County of St. Charles, Missouri v. Missouri Family Health Council*, 107 F.3d 682 at 683 (8th Cir. 1997)

At page 58 of Petitioner's appendix, the letter from Respondent Missouri Family Health Council rejecting the application gives as the sole reason for rejection of the

application that the policy on informed consent violated 42 C.F.R. §§ 59.5 and 59.11 of the Title X regulations and § 8.7 of the Title X guidelines. Simply stated, the County applied for Title X funds and was turned down because their application, including the parental consent policy, was in violation of the Title X regulations. They interject the state law question claiming that they must have this policy to conform to state law. As the District Court correctly found:

> It is this Court's considered opinion that the "face of the complaint" raises a federal question. Plaintiff's application was rejected for the sole reason that plaintiff's policy did not comply with Title X regulations and guidelines. The issue of compliance with § 431.061 was raised by the plaintiff and defendant simply responded with an opinion as to its interpretation; however, compliance or non-compliance with § 431.061 was not the reason for rejecting the application. Essentially, there is no active dispute between the parties as to the interpretation and application of § 431.061. Defendant doesn't care whether plaintiff's policy complies with state law or not. It is compliance with the provisions of Title X which is the real issue in this case. Plaintiff recognizes this fact, despite its attempts to "artfully plead" around it, when it seeks a declaration that "the policy is not a basis upon which the Council may refuse to consider the County's application for a Title X grant". The Court concurs with the defendant that plaintiff's real complaint in this case is that it has been disqualified from receiving Title X grant funding because of its policy requiring parental consent. This is a federal question.

(Appendix to plaintiff's Petition, A-14, A-15.) The Court of Appeals' affirmance of the District Court was correct and its order should be sustained. The Petition should be denied.

II. THE DISTRICT COURT PROPERLY DISMISSED THE COMPLAINT BECAUSE THE APPLICATION FOR TITLE X FUNDS VIOLATED THE PROVISIONS OF TITLE X BY REQUIRING PARENTAL CONSENT FOR INVASIVE PROCEDURES OR PROVISION OF PRESCRIPTION MEDICATION.

In 1970 Congress enacted Title X of the Public Health Service Act to establish a nationwide program with the express purpose of making comprehensive family planning services readily available to all persons desiring such services. Congress authorized the Department of Health, Education and Welfare to make grants and enter into contracts with public or non-profit entities to assist in the establishment of family planning projects that offer a broad range of family planning methods, including the provision of prescription and non-prescription contraceptive drugs and devices. 42 U.S.C. § 300(a).

From the very beginning teenagers were serviced by the recipients of Title X grants and in 1981 Congress amended Title X to require by statute that grantees encourage family participation in their Title X programs. The Secretary of Health and Human Services published for public comment certain modifications to the regulations which required recipients of Title X grants to notify a parent or guardian within ten working days of initially prescribing contraceptives to an unemancipated minor

and to comply with state law that required informed consent.

The proposed regulation was challenged on the basis that it was contrary to clear congressional intent that adolescents should be served; and in order to attract them to the family planning clinics, it was absolutely essential that services be provided to them without parental involvement. In 1983 the courts declared the new regulations to be beyond the scope of the secretary's power and contrary to congressional intent. *Planned Parenthood Federation of America, Inc. v. Heckler*, 712 F.2d 650 (D.C. Cir. 1983) The District Court found and the Court of Appeals endorsed the statement that:

> Title X does not provide, or suggest, that states are permitted to determine eligibility criteria for participants in Title X programs. . . .

and further that:

> It is elementary that under the supremacy clause of the Constitution states are not permitted to establish eligibility standards for federal assistance programs that conflict with the existing federal statutory or regulatory scheme.

Id. at 663-664. The court further stated:

> Since we have concluded that, even after the 1981 amendment, the continuing policies of Title X prohibit the secretary from requiring parental notification, the states would likewise be precluded from imposing similar conditions.

Id. at 664. It was clear in 1983 and it is clear today that recipients of Title X funds cannot impose a requirement of parental consent preliminary to delivering services to

minors. *Planned Parenthood Association of Utah v. Matheson*, 582 F.Supp. 1001 (D. Utah C.D. 1983); *Doe v. Pickett*, 480 F.Supp. 1218 (D.C. S.D. WV 1979); *Planned Parenthood Association of Utah v. Schweiker*, 700 F.2d 710 (D.C. Cir. 1983).

Petitioner seems to somehow imply, although it never was pleaded, that they provide certain services with their own funds and certain services with Title X funds. Their budget attached to the complaint and found at A-37 of their Petition for Certiorari simply shows that Title X funds are applied to each budgetary category with the largest category being personnel. Under that set of facts, if a minor walks into a family planning clinic operated by Petitioner and requests services for which the county requires parental consent, that minor will be turned away by a person who receives 1/3 of their salary from the federal government through Title X. This is clearly a violation of the Title X guidelines.

At page 9 of their Petition, they again go outside the record and claim to be an organization that offers a single method of family planning under 42 C.F.R. § 59.5(a)(1). The District Court very properly rejected that argument on the basis it was outside the face of the complaint and that Petitioner had never made an application as a provider of a single method of family planning and until such an application was made and a decision made by Respondent, Petitioner could not prove any set of facts entitling it to be eligible for funding under Title X. (Petitioner's Appendix A-7.)

Petitioner also misstates the law by quoting out of context a statement from *Jane Does v. State of Utah Department of Health*, 776 F.2d 253 (10th Cir. 1985). In that case, the Utah Department of Health was enjoined from enforcing a parental consent requirement for the provision of Title X services. Their argument was that since they provided certain services with Title X funds, they could still refer potential patients to private providers when parental consent was required under state law. The District Court and the Court of Appeals made short shrift of that argument. It is an identical type of argument made by Petitioner in this case.

In summary, this case is not a proper case for granting a Writ of Certiorari, especially since there has been absolute uniformity among the circuits on the question of parental consent as applied to Title X services. *Doe v. Utah Department of Health*, 776 F.2d 253, 255-256 (10th Cir. 1985); *New York v. Heckler*, 719 F.2d 1191, 1197 (2d Cir. 1983); *Planned Parenthood Federation of America v. Heckler*, 712 F.2d 650, 665 (D.C. Cir. 1983); *Doe, supra.*

CONCLUSION

The Petition for Writ of Certiorari should be denied on the basis that clear federal question jurisdiction was present and the circuits are uniformly in agreement with the decision of the lower court in this case.

Respectfully submitted,

LORI J. LEVINE #26172
CARSON & COIL, P.C.
515 East High, P.O. Box 28
Jefferson City, MO 65102
573-636-2177

Attorneys for Respondent